

HIN SENG & CO. v. SEAC CO.

[O.C.J. (Ambrose J.) January 24, 1963]

[Singapore — Suit No. 1039 of 1962]

Landlord and Tenant — Standard rent — Sub-tenancy — Application for apportionment of rent — Subsequent fixing of rent — Whether rent previously paid recoverable — Control of Rent Ordinance, (Cap. 242), ss.3(4) and 22 — Whether there can be different standard rents in respect of same premises.

The defendants were tenants of certain premises the standard rent of which was \$137.50 per month. They sublet an unfurnished room forming part of the said premises to the plaintiffs at a rent of \$190 per month from September 16, 1955. On an application by the plaintiffs, the Rent Conciliation Board on July 3, 1962, fixed the rent of the room at \$35 per month (inclusive of municipal charges) with effect from July 1, 1962. The plaintiffs sought to recover from the defendants under section 3(4) and or section 22 of the Control of Rent Ordinance the difference between \$190 and \$35 for the period of 81 months from September 16, 1955 to June 15, 1962, amounting to \$12,555.

Held: (1) the standard rent of the room was the rent at which it was first let, namely, \$190 per month;

(2) this standard rent could be lawfully received until the rent of the whole premises was apportioned and the rent of the room was determined by the Board, and there was no reason for making the apportionment made by the Board retrospective to the date of the commencement of the subtenancy;

(3) the standard rent of a room let or sublet separately may be fixed otherwise than by apportionment of the standard rent of the whole house.

Cases referred to:—

- (1) *Kimm v. Cohen* (1923) 40 T.L.R. 123.
- (2) *Field v. Gover* [1944] 1 K.B. 200.
- (3) *Lian Teck Chew v. Kim Leng & Co.* [1952] M.L.J. 135.
- (4) *Tan Ah Seah v. Teo Kai Min & Ors.* [1954] M.L.J. 50.
- (5) *Harwood & Anor. v. Perreau* [1955] M.L.J. 56.

SUIT.

K. C. Chan (*Peter Lee* with him) for the plaintiffs.

R. C. Hoffman for the defendants.

Cur. Adv. Vult.

Ambrose J.: The defendants are the tenants of the whole premises known as No. 11 Phillip Street, Singapore, the standard rent of which is \$137.50 per month. They let an unfurnished room on the ground floor of the premises to the plaintiffs at a rent of \$190 per month, inclusive of municipal charges, commencing from the 16th September, 1955. On the application of the plaintiffs for apportionment of the rent of the whole premises and determination of the rent of the room under section 22 of the Control of Rent Ordinance (Cap. 242), the Rent Conciliation Board, on the 3rd July, 1962, fixed the rent of the room at \$35 per month, inclusive of municipal charges, with effect from the 1st July, 1962.

The plaintiffs now seek to recover from the defendants the difference between \$190 and \$35 per month for the period of 81 months from the 16th September, 1955, to the 15th June, 1962. This amounts to \$12,555. It is alleged that this sum was received by the defendants in excess

A of the rent lawfully receivable by them in respect of the room. The claim is made under section 3(4) and or section 22 of the Control of Rent Ordinance (Cap. 242).

Section 3(4) reads as follows:

B "A tenant who has paid his landlord a sum in excess of the rent which may lawfully be received under the provisions of this section may recover such sum from the landlord."

Section 3(1) provides as follows:

"..... it shall be unlawful for any landlord..... to receive..... a rent in respect of any tenancy of premises in excess of the rent fixed by an order of the Board, or, if no order has been made, in excess of the standard rent."

C The rent which may lawfully be received by a landlord under section 3(1) is, therefore, the rent fixed by an order of the Board, or, if no order has been made, the standard rent. The order fixing the rent of the room was not made by the Board until the 3rd July, 1962. The question arises whether the defendants received a rent in excess of the standard rent for 81 months prior to that date. According to section 2 of the Ordinance, "standard rent" means:

"(a) if the rent has been fixed by the Board prior to the commencement of this Ordinance, the rent so fixed;

D (b) if the rent has not been fixed by the Board prior to the commencement of this Ordinance, the rent of the premises as at the 1st day of August, 1939; or in the case of premises which were then unlet, unoccupied or unbuild, the rent at which the premises were first let after the 1st day of August, 1939."

E According to section 2, "premises" means "any dwelling house, ... office shop and any other building in which persons are employed or work and any part of any such building let or sublet separately but does not include any new building built or completed after the 7th day of September, 1947."

The Ordinance came into force on the 20th July, 1953. It is not disputed that the room was not let on the 1st August, 1939; and that it was first let on the 16th September, 1955, at a rent of \$190 per month. In my opinion, this was the standard rent of the room; and the defendants did not, therefore, receive any rent in excess of the standard rent during the period of 81 months.

H The first contention of counsel for the plaintiffs is that the rent which was lawfully receivable by the defendants in respect of the room during the period of 81 months was the rent of \$35 per month which was fixed by the Board on the 3rd July, 1962. This contention is based on the proposition that the apportionment of rent made by the Board was retrospective. I The authority cited for this proposition is *Kimm v. Cohen* ⁽¹⁾. In that case, the plaintiff in March, 1921, let three rooms in a house to the defendant at a weekly rent of 20s. At the time of the letting the standard rent of the three rooms had not been ascertained. In January, 1923, the plaintiff sued the defendant for arrears of rent amounting to £11. The County Court held that the onus was on the defendant to prove the

standard rent, and adjourned the hearing to enable the defendant to obtain an apportionment under section 12(3) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. An apportionment summons was taken out accordingly, and on the 20th April, 1923, the apportioned rent was fixed at 11s. 7d. per week. The defendant counterclaimed for the difference between 20s. and 11s. 7d. over a period of 86 weeks, that is, from the date of the original letting to the date of the plaint. The County Court held that there could be no overpayment until the apportionment had been made, and gave judgment for the plaintiff for £11 and dismissed the counterclaim. On appeal, the Divisional Court held that the apportionment operated retrospectively, and the defendant was entitled to recover the overpayments from the date when his tenancy commenced.

The decision of the Divisional Court is founded on section 14(1) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. That subsection is in these terms:

"Where any sum has, whether before or after the passing of this Act, been paid on account of any rent..... being a sum which is by virtue of this Act, or any Act repealed by this Act, irrecoverable by the landlord..... the sum so paid shall be recoverable from the landlord..... who received the payment..... by the tenant..... by whom it was paid, and any such sum..... may, without prejudice to any other method of recovery be deducted by the tenant..... from any rent..... payable by him to the landlord....."

The Divisional Court said that it could see nothing in those words preventing a retrospective application of the Act. The Divisional Court appears to have been influenced by section 12(3) of the Act which provides for the ascertainment by the County Court of the standard rent of a dwelling-house, which is part of a larger building, by apportionment where this is necessary. The subsection is in these terms:

"Where for the purpose of determining the standard rent..... of any dwelling-house to which this Act applies, it is necessary to apportion the rent at the date in relation to which the standard rent is to be fixed,..... the County Court may, on application by either party, make such apportionment as seems just, and the decision of the Court as to the amount to be apportioned to the dwelling-house shall be final and conclusive."

It is to be noted that there is no provision in the Control of Rent Ordinance corresponding to section 12(3) of the Act. And under section 2 of the Ordinance the standard rent of the room in the case before me is the rent at which it was first let. In my opinion this standard rent could be lawfully received until the rent of the whole premises was apportioned and the rent of the room was determined by the Board. And I can see no reason for making the apportionment made by the Board retrospective to the date of the commencement of the subtenancy.

The second contention of counsel for the plaintiffs is that there cannot be two standard rents for the same premises. He cites *Field v. Gover* ⁽²⁾, and relies on the following sentence from the judgment of Goddard L.J.:

A "There was always from September 1, 1939, a standard rent applicable to the whole house, and there must, accordingly, always have been a standard rent attaching to any room which could be ascertained, though no one knew what it was until an application was made to fix it."

The decision in *Field v. Gover* follows *Kimm v. Cohen*, which I have dealt with above. It is also based on section 5 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1938, which reads as follows:

B "Where a dwelling-house to which the principal Acts apply is part of another dwelling-house to which these Acts apply, the standard rent of the first-mentioned dwelling-house as from September 29, 1938, shall be a standard rent ascertained by apportioning the standard rent of the second-mentioned dwelling-house and subsection (3) of section 12 of the Act of 1920 shall apply accordingly notwithstanding that the first-mentioned dwelling-house was let as a separate dwelling-house on or before August 1, 1914, or on or before the date on which the second-mentioned dwelling house was first let."

C This subsection, in short, provides for ascertainment of the standard rent of a part of a dwelling-house by apportionment of the standard rent of the whole, where the principal Acts apply both to the part and to the whole. As there is no corresponding provision in the Control of Rent Ordinance, it seems to me that the case cited cannot be followed.

D Counsel also cites as authority for his second contention the following passage from the judgment of Knight J. as regards the Control of Rent Ordinance, 1947, in *Lian Teck Chew v. Kim Leng & Co.* ⁽³⁾:

E "It was never the intention of the legislature to allow of two standard rents for the same premises and such an interpretation, as I see it, would make a mockery of the law which is aimed at helping tenants and not creating anomalies or absurdities."

F With the greatest respect to Knight J. it seems to me that, if the definitions of "premises" and "standard rent" in the Control of Rent Ordinance, 1947, and the Control of Rent Ordinance, 1953, are borne in mind, it is clear that the standard rent of a room let or sublet separately may be fixed otherwise than by apportionment of the standard rent of the whole house. I am fortified in my view by the following opinion expressed by Spenser Wilkinson J. as regards the Control of Rent Ordinance, 1948, of the Federation of Malaya, in *Tan Ah Seah v. Teo Kai Min and others* ⁽⁴⁾:

G "..... the vital question in the present case is whether there can be two standard rents in respect of the same building at the same time. It appears to me that the wording of the definition of 'standard rent' when read together with the definition of 'premises' makes it clear that the standard rent of a part of a house sublet may be assessed differently from the standard rent of the whole, because, if there has been no order of the Board, the first letting of each part may have occurred at different times and at different rates. If this be so it follows that if at one time the whole house is let as one and later the whole or nearly the whole is let in parts or vice versa the total of the standard rents of the parts may be greater or less than the standard rent of the building as a whole."

I The judgment of Murray-Aynsley C.J. in *Harwood and another v. Perreau* ⁽⁵⁾ also supports my view. The Ordinances referred to in the

judgment are the Control of Rent Ordinance, 1947, and the Control of Rent Ordinance, 1953; the latter came into force on the 20th July, 1953 and is now Cap. 242 in the 1955 Edition of the Laws of the Colony of Singapore. The judgment is as follows:

"These are two actions by former tenants against a landlord. The defendant is the owner of a house of which the standard rent in 1939 was \$100 p.m.

After the war the premises were let separately as two dwellings. One part was let to the plaintiff in Suit 1362 of 1954 from 1st June, 1953 at \$300 p.m.; the other to the plaintiff in Suit 1363 of 1954 at \$350 p.m.

The contention of the plaintiffs is that the Courts should apportion the standard rent between the two parts of the house and they seek in each case to recover the difference between such part of the standard rent (plus adjustments) and what they have actually paid. I think this is misconceived. Having regard to the definitions of 'premises' and 'tenancy' in both Ordinances it appears to me that after the sub-division each part became 'premises' for which the standard rent was the rent at which they were first let. (See *Vaughan v. Shaw*, [1945] 1 K.B. 400, the converse of the present case. See also *Tan Ah Seah v. Teo Kai Min*, [1954] M.L.J. 50). We do not know what that was but there is no evidence that it was less than the rate paid by the plaintiffs.

In the circumstances there must be judgment for the defendant in each case on the claim, and in Suit No. 1362 of 1954 on the counterclaim, with costs in each case."

For the above reasons I come to the conclusion that the plaintiffs did not pay the defendants any sum in excess of the rent which may lawfully be received under the provisions of section 3 and that there is nothing they are entitled to recover under section 3(4) of the Control of Rent Ordinance (Cap. 242).

The plaintiffs' claim is also made under section 22 of the same Ordinance. This section reads as follows:

"Where the tenant of any premises to which this Ordinance applies has sublet any part of such premises then the tenant or any sub-tenant of that or of any other part of such premises may at any time apply to the Board to apportion the rent of the whole premises as between the tenant and all the sub-tenants of any part or parts of the whole premises and to determine the rent of all or any one or more part or parts of the whole premises sublet to any and every sub-tenant thereof and the Board shall thereupon make such an apportionment and determination:

Provided always that the total of the rents payable to the tenant by all the sub-tenants shall not in the aggregate exceed one hundred and ten per centum of the rent of the whole premises after making an apportioned reduction in respect of any part of the premises retained by the tenant or not sublet by him:"

It seems to me that the proviso on which the plaintiffs rely lays down a principle to be observed by the Board. It does not provide for the recovery of any sum paid by the tenant to the landlord. In my view section 22 does not support the plaintiffs' claim in any way.

In the result, I give judgment for the defendants with costs.

Judgment for the defendants.

Solicitors: S. K. Lee; Allen & Gledhill.

A QUAH SIN KHENG v. MOUNT ERSKINE POULTRY FARM

[O.C.J. (Hepworth J.) January 31, 1963]

[Penang — Summons-in-Chambers No. 14 of 1963 in Civil Suit No. 229 of 1961]

Practice and Procedure — Change of solicitors — Change caused by death of solicitor on record — Consent — Form — R.S.C., O.7 rr.2(2) and 3, First Schedule Form No. 8 — Non-compliance with.

Form 8 to the First Schedule of the Rules of the Supreme Court, 1957 provides in case of a change of solicitors for the new solicitor to make the application and for the old solicitor to consent. If the old solicitor is dead the person to consent is the party himself. Then all persons concerned have been parties to the notice and are bound by it.

SUMMONS-IN-CHAMBERS.

Miss W. A. Goh for the plaintiff.

Jag-Jit Singh for the defendants.

Cur. Adv. Vult.

D **Hepworth J.:** In this Summons-in-Chambers the defendants applied that the Memorandum of Change of Solicitors entered on behalf of the plaintiff should be set aside on the ground that the form did not comply with Order 7 rule 2(2) of the Rules of the Supreme Court, 1957.

E The Memorandum complained of read as follows:—

"In the Supreme Court of the Federation of Malaya.

In the High Court at Penang.

Civil Suit No. 229 of 1961.

In the Matter of Civil Action No. 99 of 1961 in the Sessions Court at Georgetown, Penang.

Between

Quah Sin Kheng ... *Plaintiff.*

— And —

Messrs. Mount Erskine Poultry Farm (sued as a firm) ... *Defendants.*

To:

The Senior Assistant Registrar,
Supreme Court,
Penang.

G Enter Messrs. G. H. Goh & Co. as Solicitors for Quah Sin Kheng the abovenamed Plaintiff in this Suit in place of the late Mr. Lee Thean-Chu formerly of No. 18, Bishop Street, Penang.

Dated this 14th day of November, 1962.

Address for service of Messrs. G. H. Goh & Co., Room 303, O.C.B.C. Building, Beach Street, Penang.

(Signed in Chinese characters)

Quah Sin Kheng."

Paragraph (2) of rule 2 provides that notice of any change of solicitor shall be in Form 8 in the First Schedule to the Rules and shall be filed. Form 8 reads as follows:—

"Form No. 8

Change of Solicitors.

(General Heading)

To the Registrar,

Enter my name as solicitor for the abovenamed (plaintiff or defendant) in this Suit in place of Mr.

Dated the

day of

, 19